COURT NO. 2

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

Appeal from Order No. 240 of 2003

The New India Assurance Company Ltd.,
through its Divisional Manager,
Divisional Office-Opposite Judges Court,
Haldwani, District-Nainital.

..... Appellant.

Versus

1. Smt.Nawab Begum W/o late Mehboob Ali
   R/o Mohalla Santogalan, Najibabad,
   District-Bijnor. (U.P.)
2. M/s Deepak Associates through its
   Proprietor Mohan Lal Sharma
   S/o Sri Roshan Lal Sharma,
   74/9 Nehru Marg, Ashutosh Nagar,
   Rishikesh.

..... Respondents.

.....

Sri T.A.Khan, learned counsel for the appellant,
None for the respondents.

Date: 31st Aug.,2004.

Hon'ble P.C.Verma,J.
Hon'ble B.S.Verma,J.

This appeal has been preferred by the appellant/Opp.party New India Assurance Company against the judgment and order dated 03.7.2003 passed by the Workmen's Compensation Commissioner, Dehradun in Case No. W.C.A. 8 of 2000, whereby the appellant was directed to pay Rs. 2,64,557.85 to the claimant within a period of thirty days from the date of order.

2- Brief facts giving rise to this appeal are that the deceased Margoob Ali son of the claimant was employed in

the firm of Opp.party No.1 on payment of Rs. 2500/- as monthly salary. The deceased workman was doing construction work of bridge at the place Village-Maletha, Kirtinagar, District-Tehri Garhwal. In the afternoon on 02.9.1999 while Margoob Ali was working, he fell down in the river and died due to drowning. His dead body did not trace out despite search. The F.I.R. of the incident was lodged immediately at the Police Station-Kirtinagar. The deceased was 25 years old and he was bachelor. The employees of the Opp.party No.1 were insured with the Insurance Company. The claimant filed the claim petition for compensation under the Workmen's Compensation Act, 1923 against the opposite parties.

3- The opposite parties contested the claim petition before the Workmen's Compensation Commissioner ***(in short the Commissioner)*** by filing their separate written statements. The Opp.party No.1 in his written statement admitted the employment of the deceased and the accident causing the death of the deceased and also the monthly salary of the deceased as Rs. 2500/-. He further alleged that the information of the accident was given immediately to the Opp.party No.2-Insurance Company. The Opp.party No.2 in its written statement denied all the allegations made in the claim petition. The Commissioner after recording evidence adduced by the parties allowed the claim petition against the New India Assurance Company accordingly. Feeling aggrieved, the Insurance Company has come up in the appeal.

4- The learned counsel for the appellant challenged the appeal only on the ground that the deadbody of the deceased was not recovered and no postmortem was conducted and, therefore, the factum of the death was not proved and the learned Commissioner was required to take

the presumption of death after a period of seven years. The Commissioner while dealing with this point held on the basis of evidence of Sri Bhim Sharma son of Sri Ram Avtar Sharma, who has deposed on oath that he himself was working under the employment of the Opp.party No.1 on the same day in the construction of the same bridge. On 2.9.1999 in the afternoon at 12.30 p.m. Margoob Ali died due to drowning in the river while he was working in the construction of bridge. The Insurance Company did not rebut this evidence by adducing any oral or documentary evidence. The Opp.party No.1 filed the Insurance policy, which was valid upto the period 15.8.1999 to 14.9.1999. The claimant also filed the death certificate issued by the Gram Pradhan on 3.9.1999 in support of her case.

5- We have gone through the material on record and perused the impugned judgment. We are of the opinion that the findings given by the learned Commissioner are based on oral as well as documentary evidence. There was no reason to disbelieve the evidence adduced by the claimant as well as Opp.party No.1. The learned Commissioner rightly held that the deceased Margoob Ali died during the course of employment. We find no error or illegality in the impugned order. The impugned order does not call for any interference. Accordingly, the appeal has no force on merit.

6- The appeal is dismissed. The impugned judgment and order under appeal is affirmed. No order as to costs.

(B.S.Verma,J.) **(P.C.Verma,J.)**

31.8.2004
P.Singh